

**REMARKS**

Claims 1-19 are pending. Claims 1-14 have been rejected. Claims 15-19 have been objected to.

**Allowable Subject Matter**

Applicants would like to thank the Examiner for indicating the allowability of Claims 15-19.

**Claim Rejections – 35 U.S.C. § 102(b)**

Claim 1-11 and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,275,603 to Ferrante et al. ("Ferrante '603").

Ferrante '603 discloses instrument 10, shown in Fig. 2, for osteotomy of the proximal tibial surface. Specifically, following preparation of the tibia 12, an appropriate sized tibial trial base 26 is situated on surface 25 of tibia 12 to determine if the proximal surface of the tibia is sufficiently covered by trial base 26 without significant overhang. Trial base 26 is then removed from tibial surface 25 and interlocked to tibial trial stem 78 by trial screw 76, which is threaded into threaded bore 79 of trial stem 78. Trial stem 78 may then be inserted into the intermedullary canal of the tibia. Guide block 14 of tibial cutting guide 10 is then seated within femoral runner 28 of trial base 26. Next, handle 32 is inserted through opening 22 of guide block 14 and threaded portion 66 is threaded into threaded bore 84 of trial screw 76. Once in this position, guide means, which include a pair of blade slots 44, are pivotally mounted on post 42 and adjusted to set the proper angle for resection of the tibia.

Applicants respectfully submit that independent Claim 1 is not anticipated by Ferrante '603. Specifically, independent Claim 1 calls for an apparatus for the fixing of the position of bone cuts for the insertion of knee implants including, *inter alia*, at least one cutting jig which is adapted to be coupled to a base element fixed to the bone in the region of the condyle and adapted to be fixed to the base element, wherein *the cutting jig* includes *a first slot* for a cutting tool defining a first cutting plane with respect to the base element and *a second slot* for a cutting tool defining a second cutting plane, both of the first slot and the second slot configured to receive a cutting tool *while said cutting jig* remains coupled to the base element.

In forming the rejection, the Examiner relies on instrument 10 as defining the cutting jig called for in independent Claim 1. However, independent Claim 1 calls for the cutting jig

including a first slot for a cutting tool defining the first cutting plane and a second slot for a second cutting tool defining a second cutting plane. The portion of instrument 10 that the Examiner cites as having a first slot is the guide means pivotally mounted on post 42 that includes slot 44. Thus, the cutting guide called for in independent Claim 1 must be the portion of device 10 that contains slot 44. Additionally, in forming the rejections, the Examiner relies on tibial trial plates 26 as forming the base element called for in independent Claim 1.

Thus, taking the portions of instrument 10 defining slot 44 as the cutting jig called for in independent Claim 1 and tibial base 26 as the base element called for in independent Claim 1, the device of Ferrante '603 fails to disclose each and every limitation of independent Claim 1. Specifically, as indicated above, the Examiner relies on blade slot 44 as defining the first slot for a cutting tool called for in independent Claim 1. Additionally, the Examiner relies on femoral runner 28 of tibial sizing plate 26 as forming the second slot configured to receive a cutting tool called for in independent Claim 1. However, independent Claim 1 calls for a cutting jig including a first slot for a cutting tool defining a first cutting plane *and a second slot* for a cutting tool defining a second cutting plane. In contrast to the language of independent Claim 1, the Examiner has relied on a slot forming within the cutting jig and a second slot defined by the base element as the first and second slots called for in independent Claim 1. Nowhere does Ferrante '603 disclose a first cutting slot for a cutting tool defining a cutting plane with respect to the base element and a second slot for a cutting tool defining a second cutting plane that are both contained within the cutting jig.

Furthermore, independent Claim 1 also requires that both of the first slot and the second slot are configured to receive a cutting tool *while the cutting jig remains coupled to the base element*. In contrast, with the guide means containing cutting slot 44 connected to tibial sizing guide 26, guiding block 14 is positioned within femoral runner 28. See Ferrante '603, column 5, lines 1-3. As a result of positioning guide block 14 within femoral runner 28, femoral runner 28 is incapable of receiving the cutting tool. Moreover, with guide block 14 removed from femoral runner 28, the portion of instrument 10 including first cutting slot 44 is no longer coupled to tibial sizing plate 26, as required by independent Claim 1.

For at least the foregoing reasons, Applicant respectfully submits that independent Claim 1, as well as Claims 2-11 and 14, which depend therefrom, are not anticipated by Ferrante '603.

**Claim Rejections – 35 U.S.C. § 103(a)**

Claims 12 and 13 are rejected under 35 U.S.C. § 103(a) as being anticipated by Ferrante '603 in view of U.S. Patent No. 6,796,986 to Duffner ("Duffner '986").

In forming the rejection, the Examiner relies on Ferrante '603 as disclosing each and every limitation called for independent Claim 1. However, for at least the reasons set forth above, Ferrante '603 fails to disclose each and every limitation of amended independent Claim 1. The Examiner's additional citation of Duffner '986 fails to overcome this deficiency, as neither Ferrante '603 nor Duffner '986, either alone or in combination, disclose or suggest an apparatus for the fixing of the position of bone cuts for the insertion of knee implants including, *inter alia*, at least one cutting jig which is adapted to be coupled to a base element fixed to the bone in the region of a condyle and is adapted to be fixed to the base element, wherein the cutting jig includes a first slot for a cutting tool defining a first cutting plane with respect to the base element and a second slot for a cutting tool defining a second cutting plane, both of the first cutting slot and the second cutting slot configured to receive a cutting tool while the cutting jig remains coupled to the base element.

Thus, Applicant respectfully submits that Claims 12 and 13, which depend from independent Claim 1, are not obvious over Ferrante '603 in view of Duffner '986.

In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

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Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



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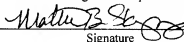
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June 16, 2008

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